

Message Text

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DEPT PASS TO NIH FOGARTY INTERNATIONAL CENTER - DR. J. QUINN

E.O. 11652: N/A

TAGS: TBIO, CA

SUBJ: INFORMATION ON COMPENSATION TO SUBJECTS INJURED THROUGH
BIO-MEDICAL RESEARCH EXPERIMENTATION

REF: STATE 170457

1. FOLLOWING INTERIM ANSWER PROVIDED TO REFTEL:

A. ALL CANADIAN GOVERNMENT RESEARCH FACILITIES REQUIRE WAIVERS FROM INDIVIDUALS ENGAGED AS SUBJECTS IN BIOMEDICAL RESEARCH. PRELIMINARY CHECK DOES NOT REVEAL THAT THESE WAIVERS HAVE EVER BEEN FORMALLY CHALLENGED IN THE COURTS OR OTHER LEGAL OR REGULATORY PROCEDURES.

B. CANADA HAS NO LAW WHICH, PER SE, ADDRESSES ITSELF TO THE RIGHTS OF A SUBJECT INJURED IN BIOMEDICAL RESEARCH TO CLAIM COMPENSATION.

C. IN ABSENCE OF SPECIFIC LEGISLATION, COMMON LAW WOULD APPLY.

D. CANADIAN RESEARCH FACILITIES CAN BE BROADLY DIVIDED INTO 3 CATEGORIES: GOVERNMENT FACILITIES, CROWN CORPORATIONS, AND PRIVATE FACILITIES. A CLAIM FOR INJURY OCCURRING IN A GOVERNMENT RESEARCH FACILITY COULD BE BROUGHT AS A SUIT AGAINST THE CROWN AFTER OBTAINING PERMISSION TO FILE SUCH A SUIT. MOST CROWN CORPORATIONS ARE CAPABLE

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OF BEING SUED AND SUEING IN THEIR OWN RIGHT WITHOUT REFERENCE

TO THE CROWN. THIS INCLUDES THE MEDICAL RESEARCH COUNCIL OF CANADA AND THE NATIONAL RESEARCH COUNCIL OF CANADA. IN SUEING A CROWN CORPORATION, HOWEVER, DEPENDING UPON THE NATURE OF THE SUIT AND THE NATURE OF THE CORPORATION, THERE ARE VARYING GRADES OF LEGAL SUBTLETIES WHICH CAN ALTER THE TYPE OF SUIT WHICH CAN BE FILED AND THE KIND OF AWARDS WHICH ARE POSSIBLE. FINALLY, A PRIVATE FACILITY, E.G., AN INDUSTRIAL RESEARCH LABORATORY, WOULD BE SUBJECT TO A STRAIGHTFORWARD APPLICATION OF THE COMMON LAW.

2. EMBASSY OFFICERS PLAN TO MEET WITH SENIOR LEGAL ADVISER, MRC-NRC, AFTER HE HAS HAD TIME TO RESEARCH THE SUBJECT FURTHER, AND WILL REPORT ANY ADDITIONAL SIGNIFICANT INFORMATION DEVELOPED FROM THAT MEETING.

3. CANADIAN LEGAL ADVISORS, WHOM WE CONSULTED AT HEALTH AND WELFARE AND MRC-NRC, HAVE REQUESTED AS MUCH BACKGROUND INFORMATION AS CAN BE MADE AVAILABLE CONCERNING THIS INQUIRY. THE REASON GIVEN IN BOTH CASES WAS THAT IF THIS SUBJECT IS ARISING IN THE U.S., IT IS NOT LIKELY TO BE LONG BEFORE SIMILAR ISSUES WILL BE RAISED IN CANADA, AND THEY WOULD, THEREFORE, APPRECIATE HAVING AS MUCH BACKGROUND AT THEIR DISPOSAL AS POSSIBLE. PLEASE AIR POUCH INFORMATION AVAILABLE. JOHNSON

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